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PERFORMANCE CONTRACTING, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA for the use and
13 benefit of WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS, and WEBCOR
14 CONSTRUCTION, INC. dba WEBCOR
BUILDERS,

15 Plaintiffs,

16 vs.
17

18 DICK/MORGANTI, a joint venture; DICK
CORPORATION; THE MORGANTI GROUP;
19 AMERICAN CASUALTY COMPANY OF
READING, PENNSYLVANIA; NATIONAL
20 UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA; and DOES 1-10, inclusive,

21 Defendants.
22

23 AMERICAN CASUALTY COMPANY OF
READING, PA; NATIONAL UNION FIRE
24 INSURANCE COMPANY OF PITTSBURGH,
PA,

25 Third-Party Plaintiffs,
26

Case No. 3:07-CV-02564-CRB

**DECLARATION OF EUGENE D.
CONCANNON IN SUPPORT OF
PERFORMANCE CONTRACTING
INC.'S STATUS CONFERENCE
STATEMENT**

DATE: February 22, 2008
TIME: 10:00 a.m.
JUDGE: Hon. Charles R. Breyer
(Courtroom 8)

1 vs.

2 BOYETT CONSTRUCTION, INC., a California
 3 corporation; MARELICH MECHANICAL CO.,
 4 INC., a California corporation; PERFORMANCE
 5 CONTRACTING GROUP, INC. dba
 6 PERFORMANCE CONTRACTING, INC., a
 7 Delaware corporation; PERMASTEELISA
 8 GROUP USA HOLDINGS CORP., a Delaware
 9 corporation fdba PERMASTEELIS CLADDING
 10 TECHNOLOGIES L.P., a Delaware limited
 11 partnership, fdba PERMASTEELISA CLADDING
 12 TECHNOLOGIES, LTD.; ROSENDIN
 13 ELECTRIC, INC., a California corporation;
 14 THIRD PARTY DOE DEFENDANTS 1
 15 THROUGH 20.

16 Third Party Defendants.

17 I, Eugene D. Concannon, declare as follows:

18 1. I am an employee of third-party defendant and plaintiff Performance Contracting,
 19 Inc. ("PCI") in the above-captioned case. I served as one of the Project Managers for PCI at the
 20 construction of the GSA Federal Building located at 7th and Mission Streets in San Francisco,
 21 California. If called upon, I could and would competently testify to the matters stated herein.

22 2. PCI's underlying claim for the GSA project is approximately \$7,549,856.00. A
 23 substantial portion of PCI's claim consists of its unpaid contract balance of approximately
 24 \$3,005,018.00. Dick/Morganti ("D/M") stopped making contract payments to PCI beginning in
 25 or about August 2006 when it asserted various back charges against PCI for work on the project.
 26 PCI protested the vague and unsubstantiated back charges and demanded a meeting with D/M to
 27 discuss the issue.

3. Pursuant to PCI's request a meeting was first held on December 13, 2006,
 between representatives of PCI and D/M to discuss the back charge issue. I attended that
 meeting along with George DeMartini of PCI and PCI's consultant, Jim Howard.

4. On April 5, 2007, another meeting was held to discuss D/M's alleged back

1 charges. I attended that meeting along with Robert Dean of PCI. During the meeting, we
2 provided further responses to D/M's back charges. The meeting was also attended by one of
3 PCI's consultants on the project, Jim Howard, who provided a detailed response to many of
4 D/M's alleged back charges. At the conclusion of the meeting, D/M requested that there be
5 further meetings between the parties' respective staffs to review and discuss the information and
6 documentation provided by PCI. Thereafter, PCI met two additional times with D/M in April
7 and May 2007. I personally attended both meetings along with other personnel from PCI.

8 5. During these meetings, PCI provided specific and voluminous documentation as
9 to why D/M's back charges had no merit. At the conclusion of these meetings, D/M voiced no
10 disagreement with PCI's presentation of facts, but rather stated that it needed more time to
11 review PCI's position. Since these meetings in April and May 2007, D/M has failed to provide
12 PCI with any substantive response to its arguments or to the voluminous documentation that PCI
13 provided supporting its position with the exception of providing copies of some billings from
14 another subcontractor retained on the project and related invoices for material purchased. These
15 billings and invoices related to one and only one of D/M's alleged back charges against PCI and
16 concerned in-fill framing and gypsum sheathing work that was done on the exterior of the GSA
17 building. These billings and invoices were not accompanied by any type of explanation of their
18 importance nor an itemization. In contending that PCI was responsible for this work, D/M took
19 the position that the work was included in PCI's subcontract. However, in its global claim filed
20 recently with the GSA, D/M has taken the contrary position and now asserts that this work was
21 extra work entitling it to compensation.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct. Executed on February 20, 2008, at ANAHEIM, California.

24 
25 Eugene D. Concannon